

(f) This exemption shall take effect only in the event that a final PSD permit modification becomes effective.

(g) The Administrator may terminate the exemption through rulemaking procedures upon determining that HOVIC's use of the ICS is causing or contributing to an exceedance of the NAAQS.

(h) Pursuant to section 325(a) of the Clean Air Act (CAA) and a petition submitted by the Governor of United States Virgin Islands on July 21, 2003, ("2003 Petition"), the Administrator of EPA conditionally exempts Virgin Islands Water and Power Authority ("VIWAPA") from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 2003 Petition as Unit 23, St. Krum Bay plant in St. Thomas with the following condition:

(i) Unit 23 shall not operate until a final PSD permit is received by VIWAPA for this unit;

(ii) Unit 23 shall not operate until it complies with all requirements of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Unit 23 operates either prior to the issuance of a final PSD permit or without BACT equipment, Unit 23 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) [Reserved]

[62 FR 61205, Nov. 14, 1997, as amended at 69 FR 10335, Mar. 5, 2004]

Subpart E—Alaska

§ 69.51 Motor vehicle diesel fuel.

(a) *Definitions.* (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(b) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye

provisions of 40 CFR 80.29(a)(3) and (b) and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements until the implementation dates of 40 CFR 80.500 for refiners and importers, until September 1, 2006 for all downstream parties other than retailers and wholesale purchaser-consumers, and until October 15, 2006 for retailers and wholesale purchaser-consumers, provided that:

(1) The fuel is segregated from non-exempt diesel fuel from the point of such designation;

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating: "This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to highway diesel fuel and red dye requirements applicable to non-highway diesel fuel only if it is used in Alaska."; and,

(3) After June 1, 2006 and prior to the implementation dates specified above, diesel fuel represented by a downstream party as meeting the 500 ppm sulfur standard or the 15 ppm sulfur standard for highway diesel fuel shall be subject to and must meet such standard.

(c) Beginning on the implementation dates specified in paragraph (b) of this section, motor vehicle diesel fuel that is designated for use in areas of Alaska accessible by the Federal Aid Highway System, or is used in areas of Alaska accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel.

(d) From the implementation dates specified in paragraph (b) of this section, until the implementation dates specified in paragraph (e) of this section, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, and is used in areas of Alaska not accessible by the Federal Aid Highway System, is exempt from

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the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and (b), and the motor vehicle diesel fuel standards and dye provisions under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in model year 2007 and later highway vehicles and engines,

(2) The exempt fuel is segregated from nonexempt highway diesel fuel from the point of such designation; and

(3) On each occasion that any person transfers custody or title to the exempt fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating: “This fuel is for use only in those areas of Alaska not accessible by the FAHS.”

(4) The exempt fuel must meet the labeling requirements under § 80.570, except the following language shall be substituted for the language on the labels:

“HIGH SULFUR DIESEL FUEL (MAY BE
GREATER THAN 15 SULFUR PPM)

WARNING

Federal Law *prohibits* use in model year 2007 and later highway diesel vehicles and engines. Its use may damage these vehicles and engines.”

(e) Beginning on the following implementation dates, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, or is used in areas of Alaska not accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel:

(1) June 1, 2010 for diesel fuel produced or imported by any refiner or importer;

(2) August 1, 2010 at all downstream locations, except at retail outlets and wholesale-purchaser consumers;

(3) October 1, 2010 for:

(i) Retail outlets and wholesale-purchaser consumers, or

(ii) Downstream locations which include retail outlets and wholesale-purchaser consumers; and,

(4) December 1, 2010 at all locations.

[71 FR 32462, June 6, 2006]

§ 69.52 Non-motor vehicle diesel fuel.

(a) *Definitions.* (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(3) *Nonroad, locomotive, or marine diesel fuel (NRLM)* has the meaning given in 40 CFR 80.2.

(4) *Heating oil* has the meaning given in 40 CFR 80.2.

(b) *Applicability.* NRLM diesel fuel and heating oil that are used or intended for use in areas of Alaska accessible by the Federal Aid Highway System are subject to the provisions of 40 CFR part 80, subpart I, except as provided in paragraphs (c), (d) and (e) of this section.

(c) *Dye and marker.* (1) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under 40 CFR 80.520(b)(2) and 80.510(d)(5), (e)(5), and (f)(5).

(2) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the marker solvent yellow 124 requirements, and the presumptions associated with the marker solvent yellow 124 requirements, under 40 CFR 80.510(d) through (f).

(3) Exempt NRLM diesel fuel and heating oil must be segregated from all non-exempt NRLM diesel fuel and heating oil.

(4) Exempt heating oil must be segregated from exempt NRLM diesel fuel unless it also meets the standards of 40 CFR 80.510 applicable to the NRLM diesel fuel.

(5) Exempt NRLM diesel fuel and heating oil must be segregated from motor vehicle diesel fuel, unless it also meets the standards of 40 CFR 80.520 applicable to the motor vehicle diesel fuel.

(d) *Product transfer documents.* Product Transfer Documents for exempt